

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MAURECE KAVEL,

Applicant,

vs.

No. CIV 13-0190 JB/ACT

GERMAN FRANCO, WARDEN,

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court under rules 4 and 11 of the Rules Governing Section 2254 Cases, for preliminary consideration of Applicant's Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody, filed February 26, 2013 (Doc.1)(“Application”). Also before the Court is Applicant’s Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed February 26, 2013 (Doc. 3)(“Motion”). The Court will grant the Motion and will dismiss the Application for lack of jurisdiction.

ANALYSIS

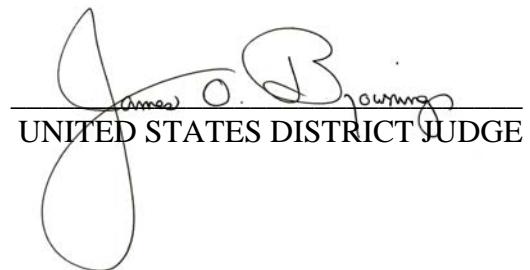
In previous § 2254 proceedings, Kavel v. Tapia, No. CIV 07-0508 MV/LFG; Kavel v. Romero, No. CIV 09-0958 WJ/RLP; and Kavel v. Marshall, No. CIV 10-1036 JH/LFG, Applicant Maurece Kavel attacked the same state court criminal conviction that is the subject of this proceeding. See Duhart v. Carlson, 469 F.2d 471, 473 (10th Cir. 1972)(noting that the court may take judicial notice of its own records). In two of these proceedings, Nos. CIV 07-0508 MV/LFG; CIV 09-0958 WJ/RLP, Kavel asserted claims of mental incompetence, and the Court dismissed both applications. Now, more than five years later, Kavel raises the identical issue as the sole claim in his new application.

When a second or successive § 2254 or § 2255 claim is filed in the district court without the required authorization from this court, the district court may transfer the matter to [the Court of Appeals] if it determines it is in the interest of justice to do so under § 1631, or it may dismiss the motion or petition for lack of jurisdiction.

In re Cline, 531 F.3d 1249, 1252 (10th Cir. 2008). See Coleman v. United States, 106 F.3d 339, 341 (10th Cir. 1997); 28 U.S.C. § 1631. The current Application is Kavel's fourth and is not accompanied by an authorizing order. This District has previously dismissed Kavel's current claim and two other applications attacking the same conviction. According to the factors in In re Cline, the Court will therefore dismiss Kavel's Application for lack of jurisdiction. The Court hereby notifies Kavel that filing of further habeas corpus pleadings against the same conviction may result in imposition of filing restrictions.

Furthermore, under rule 11 of the Rules Governing Section 2254 Cases, because Kavel has failed to make a substantial showing of denial of a constitutional right, the Court will deny a certificate of appealability.

IT IS THEREFORE ORDERED that (i) Applicant's Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed February 26, 2013 (Doc. 3) is granted, and he may proceed without prepayment of costs or other fees or the necessity of giving security therefor; (ii) Applicant's Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody, filed February 26, 2013 (Doc. 1) is dismissed for lack of jurisdiction; (iii) a certificate of appealability is denied; and (iv) judgment will be entered.



UNITED STATES DISTRICT JUDGE

Parties:

Maurece Kavel
Penitentiary of New Mexico
Santa Fe, New Mexico

Applicant pro se